

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY SCOTT VAN HUSIEN,

Plaintiff,

v.

BILL NELSON,

Defendant.

Case No. 2:24-cv-00083-DJC-JDP (PC)

**FINDINGS AND RECOMMENDATIONS**

THAT PLAINTIFF'S APPLICATIONS TO  
PROCEED *IN FORMA PAUPERIS* BE  
DENIED

ECF Nos. 2, 6, 9, & 11

**OBJECTIONS DUE WITHIN FOURTEEN  
DAYS**

Plaintiff has filed a first amended complaint, ECF No. 5, and four requests to proceed *in forma pauperis*, ECF Nos. 2, 6, 9, & 11.<sup>1</sup> However, after a review of plaintiff's filings in this district, it appears that plaintiff is a "Three-Striker" within the meaning of Title 28 U.S.C. § 1915(g).

The Prison Litigation Reform Act of 1995 provides that a prisoner may not bring a civil action or appeal a judgment in a civil action or proceeding under 28 U.S.C. § 1915 (i.e., may not proceed *in forma pauperis*) "if the prisoner has, on three or more prior occasions, while

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<sup>1</sup> Plaintiff has filed two complaints; the initial complaint was filed January 8, 2024, ECF No. 1, and the first amended complaint was filed January 16, 2024, ECF No. 5. The first amended complaint is the operative complaint, but the court will review the initial complaint to assess whether plaintiff was in imminent danger at the time of filing.

1 incarcerated or detained in any facility, brought an action or appeal in a court of the United States  
2 that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon  
3 which relief may be granted, unless the prisoner is under imminent danger of serious physical  
4 injury.” 28 U.S.C. § 1915(g). Any dismissal for failure to state a claim, whether with or without  
5 prejudice, counts as a strike. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724-25 (2020).

6 The court takes judicial notice of the following cases constituting strikes: *Van Huisen v.*  
7 *DeSantis*, No. 2:23-cv-01758-WBS-KJN (E.D. Cal. Jan. 2, 2024) (dismissed for failure to state a  
8 claim); *Van Huisen v. Clinton Administration*, No. 2:23-cv-01596-DJC-KJN (E.D. Cal. Jan. 16,  
9 2024) (dismissed for failure to state a claim); and *Van Husisen v. Joseph R. Biden*, No. 2:23-cv-  
10 00944-DJC-EFB (E.D. Cal. Jan. 16, 2024) (dismissed for failure to state a claim). The court also  
11 takes judicial notice of *Van Husien v. Chief of Staff*, No. 2:23-cv-02815-DAD-JDP (E.D. Cal.  
12 April 3, 2024), where the court denied plaintiff’s motion to proceed *in forma pauperis* because he  
13 is a Three Striker.

14 Despite being a “Three-Striker,” a plaintiff may be afforded an opportunity to proceed *in*  
15 *forma pauperis* under § 1915(g) if he alleges that he was in imminent danger at the time he filed  
16 the complaint. See 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir.  
17 2007). The plain language of the imminent danger clause in § 1915(g) indicates that imminent  
18 danger is to be assessed at the time of filing of the original complaint (“In no event shall a  
19 prisoner *bring a civil action . . .*” (emphasis added)). See *Andrews v. Cervantes*, 493 F.3d 1047,  
20 1053 (9th Cir. 2007) (“*Andrews II*”); *Bradford v. Usher*, Case No. 1:17-cv-01128-DAD-SAB,  
21 2019 WL 4316899, \*4 (E.D. Cal. Sept. 12, 2019) (“[I]mminent danger for purposes of § 1915(g)  
22 is to be measured at the time of the commencement of the action.”). Under this approach, the  
23 conditions that existed at some earlier or later time are not relevant. See *Andrews II*, 493 F.3d at  
24 1053 & n.5 (post-filing transfer of prisoner out of prison at which danger allegedly existed may  
25 have mooted request for injunctive relief against alleged danger but did not affect § 1915(g)  
26 analysis).

1 Plaintiff has not alleged that he was in imminent danger at the time of filing.<sup>2</sup> ECF No. 1.  
 2 The complaint purports to bring claims against Bill Nelson, the director of the National  
 3 Aeronautics and Space Administration (“NASA”). ECF No. 1 at 2. The claims plaintiff attempts  
 4 to allege, however, are unclear and difficult to decipher. For example, plaintiff labels his first  
 5 claim as “lost leader, vis masor, ‘accident, involuntary force, tyranny’ man is more disposed to  
 6 suffer.” ECF No. 1 at 5. Additionally, sentences in the complaint appear at times to be a series of  
 7 unconnected words and latin phrases. *Id.* at 6 (“Nulla emptio sine pretio esse potest.”). These  
 8 allegations, taken as true, do not establish that plaintiff was in imminent danger of physical harm  
 9 at the time of filing.

10 Accordingly, it is RECOMMENDED that plaintiff’s applications to proceed *in forma*  
 11 *pauperis*, ECF Nos. 2, 6, 9, & 11, be DENIED and plaintiff be directed to tender the filing fee  
 12 within thirty days of any order adopting these recommendations.

13 These findings and recommendations are submitted to the United States District Judge  
 14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
 15 after being served with these findings and recommendations, any party may file written  
 16 objections with the court and serve a copy on all parties. Such a document should be captioned  
 17 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
 18 objections shall be served and filed within fourteen days after service of the objections. The  
 19 parties are advised that failure to file objections within the specified time may waive the right to  
 20 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
 21 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22  
 23 IT IS SO ORDERED.

24 Dated: May 2, 2024

25   
 26 JEREMY D. PETERSON  
 UNITED STATES MAGISTRATE JUDGE

27 <sup>2</sup> While courts look to the initial complaint to assess imminent danger, the undersigned  
 28 additionally reviewed the amended complaint and finds that it too does not contain any notion  
 that plaintiff was in imminent danger at the time of that filing.